

# **OPEN MEETINGS LAWS**

## **I. ARTICLE XII, SECTION 3, LOUISIANA CONSTITUTION (1974)**

### **§3. Right to Direct Participation**

No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.

## **II. OPEN MEETINGS STATUTES, LSA-R.S. 42:4.1-13.**

### **A. PUBLIC POLICY/CONSTRUCTION**

#### **§ 4.1. Public policy for open meetings; liberal construction**

A. It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. Toward this end, the provisions of R.S. 42:4.1 through R.S. 42:10 shall be construed liberally.

B. Further, to advance this policy, all public bodies shall post a copy of R.S. 42:4.1 through 13.

**Louisiana Attorney General Opinion # 04-116 states, in part** - D.A.R.E.'s purpose may be construed to include governmental functions pursuant to La.R.S. 42:4.1, which favors a liberal construction of the Open Meetings Laws. In addition, D.A.R.E. relies exclusively on public monies (tax-derived funds) for the purposes of conducting the D.A.R.E. program and, within its By-laws, has set policy for the receipt, deposit, withdrawal, and expenditure (i.e., funds management) of such funds. Based on the foregoing, we conclude that D.A.R.E. is indeed subject to the State's "Open Meetings" law, La.R.S. 42:4.1 et. seq., and should comply therewith.

### **B. DEFINITIONS**

#### **§ 4.2. Definitions**

A. For the purposes of [R.S. 42:1](#) through [R.S. 42:12](#):

(1) "Meeting" means the convening of a quorum of a public body to deliberate or act on a matter over which the public body has supervision, control, jurisdiction, or advisory power. It shall also mean the convening of a quorum of a public body by the public body or by another public official to receive information regarding a matter over which the public body has supervision, control, jurisdiction, or advisory power.

(2) "Public body" means village, town, and city governing authorities; parish governing authorities; school boards and boards of levee and port commissioners; boards of publicly operated utilities; planning, zoning, and airport commissions; and any other state, parish, municipal, or special district boards, commissions, or authorities, and those of any political subdivision thereof, where such body possesses policy making, advisory, or administrative functions, including any committee or subcommittee of any of these bodies enumerated in this paragraph.

(3) "Quorum" means a simple majority of the total membership of a public body.

B. The provisions of [R.S. 42:4.1](#) through [R.S. 42:12](#) shall not apply to chance meetings or social gatherings of members of a public body at which there is no vote or other action taken, including formal or informal polling of the members.

**Louisiana Attorney General Opinion #87-48 states, in part** – A meeting, as defined in the Open Meetings Laws, includes gatherings to discuss or act, and the fact that no binding action is taken or intended will not remove a meeting from the requirements of the Open Meetings Laws. Meetings held pursuant to prior notice of the intent to discuss official business must meet the requirements of the Open Meetings Laws.

**Louisiana Attorney General Opinion # 76-1399 states, in part** - All meetings of public bodies, with the exception of purely social or chance encounters, are required to be open to the public, unless closed pursuant to LSA-R.S. 42:6.

**Louisiana Attorney General Opinion #84-395 states, in part** – A "public body" includes any committee or subcommittee of a city governing authority, and the fact that a committee cannot make a final decision on a matter does not remove meetings of that committee from the ambit of the open meetings requirements. It was found, "In conclusion, a working committee of a municipality constitutes a public body when it meets to discuss matters over which it has authority or advisory power, even if the committee takes no binding action."

**Louisiana Attorney General Opinion # 99-34 states, in part** - If a quorum of the Council or a committee thereof contacts each other by telephone for the purpose of discussing or deciding on a course of action on a matter over which it has authority, this would be considered a circumvention of the open meetings laws.

## **§ 5. Meetings of public bodies to be open to the public**

A. Every meeting of any public body shall be open to the public unless closed pursuant to [R.S. 42:6](#), [R.S. 42:6.1](#), or [R.S. 42:6.2](#).

B. Each public body shall be prohibited from utilizing any manner of proxy voting procedure, secret balloting, or any other means to circumvent the intent of [R.S. 42:4.1](#) through R.S. 42:8.

C. All votes made by members of a public body shall be viva voce and shall be recorded in the minutes, journal, or other official, written proceedings of the body, which shall be a public document.

D. Except school boards, which shall be subject to [R.S. 42:5.1](#), each public body conducting a meeting which is subject to the notice requirements of [R.S. 42:7\(A\)](#) shall provide an opportunity for public comment at such meeting, subject to reasonable rules, regulations, and restrictions as adopted by the public body.

**Louisiana Attorney General Opinion # 02-0106 states, in part** - The intent of LA R.S. 42:5(B) is to require physical presence at open meetings in order to participate in any matter. Any participation via telephone, whether it is to obtain a quorum or to allow voting by non-present board members is a violation of the open meetings law.

**Louisiana Attorney General Opinion # 01-0367 states, in part** - The comment period established by LA R.S. 42:5(D) applies only to items placed on the agenda, and the rules and regulations governing this period are to be established by each public body.

#### **§ 5.1. School board meetings; public comment**

Notwithstanding any other law to the contrary, each school board subject to the provisions of this Chapter shall allow public comment at any meeting of the school board prior to taking any vote. The comment period shall be for each agenda item and shall precede each agenda item. A comment period for all comments at the beginning of a meeting shall not suffice as a comment period.

**Louisiana Attorney General Opinion # 04-0107 states, in part** - LSA-R.S. 42:5.1 does not preclude a school board from placing requirements on individuals that desire to speak such as filling out a sign-up card before a school board meeting, limiting the speaker to the agenda item on which he would like to speak, limiting the amount of time for each speaker, and/or restricting speakers from making defamatory or accusatory comments.

### **C. EXECUTIVE SESSIONS; EXCEPTIONS**

#### **§ 6. Executive Sessions**

A public body may hold executive sessions upon an affirmative vote, taken at an open meeting for which notice has been given pursuant to [R.S. 42:7](#), of two-thirds of its constituent members present. An executive session shall be limited to matters allowed to be exempted from discussion at open meetings by [R.S. 42:6.1](#); however, no final or binding action shall be taken during an executive session. The vote of each member on the question of holding such an executive session and the reason for holding such an executive session shall be recorded and entered into the minutes of the meeting. Nothing in this Section or [R.S.](#)

[42:6.1](#) shall be construed to require that any meeting be closed to the public, nor shall any executive session be used as a subterfuge to defeat the purposes of [R.S. 42:4.1](#) through [R.S. 42:8](#).

**Louisiana Attorney General Opinion # 01-468 states, in part** - Public bodies may convene executive sessions pursuant to R.S. 42:6 for the discussion of the character, professional competence, or physical or mental health of a person; strategy sessions or negotiations with respect to collective bargaining and/or prospective litigation; investigative proceedings regarding allegations of misconduct; etc. Please see the opinion so as to be advised of any other instances and the requirements associated with public bodies' authority to convene an executive session.

### **§ 6.1. Exceptions to open meetings**

A. A public body may hold an executive session pursuant to [R.S. 42:6](#) for one or more of the following reasons:

(1) Discussion of the character, professional competence, or physical or mental health of a person, provided that such person is notified in writing at least twenty-four hours before the meeting and that such person may require that such discussion be held at an open meeting, and provided that nothing in this Subsection shall permit an executive session for discussion of the appointment of a person to a public body. In cases of extraordinary emergency, written notice to such person shall not be required; however, the public body shall give such notice as it deems appropriate and circumstances permit.

(2) Strategy sessions or negotiations with respect to collective bargaining, prospective litigation after formal written demand, or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public body.

(3) Discussion regarding the report, development, or course of action regarding security personnel, plans, or devices.

(4) Investigative proceedings regarding allegations of misconduct.

(5) Cases of extraordinary emergency, which shall be limited to natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions, or other matters of similar magnitude.

(6) Any meeting of the State Mineral Board at which records or matters entitled to confidential status by existing law are required to be considered or discussed

by the board with its staff or with any employee or other individual, firm, or corporation to whom such records or matters are confidential in their nature, and are disclosed to and accepted by the board subject to such privilege, for the exclusive use in evaluating lease bids or development covering state-owned lands and water bottoms, which exception is provided pursuant to and consistently with the Public Records Act, being Chapter I of Title 44 of the Louisiana Revised Statutes of 1950, as amended, and other such statutes to which the board is subject.

(7) Discussions between a city or parish school board and individual students or the parents or tutors of such students, or both, who are within the jurisdiction of the respective school system, regarding problems of such students or their parents or tutors; provided however that any such parent, tutor, or student may require that such discussions be held in an open meeting.

(8) Or any other matters now provided for or as may be provided for by the legislature.

(9) Presentations and discussions at meetings of civil service boards of test questions, answers, and papers produced and exhibited by the office of the state examiner, municipal fire and police civil service, pursuant to [R.S. 33:2492](#) or 2552.

B. The provisions of [R.S. 42:4.1](#) through [R.S. 42:12](#) shall not apply to judicial proceedings.

C. The provisions of [R.S. 42:4.1](#) through [R.S. 42:12](#) shall not prohibit the removal of any person or persons who willfully disrupt a meeting to the extent that orderly conduct of the meeting is seriously compromised.

D. The provisions of [R.S. 42:7](#) and [R.S. 42:7.1](#) shall not apply to any meeting of a private citizens' advisory group or a private citizens' advisory committee established by a public body, when the members of such group or committee do not receive any compensation and serve only in an advisory capacity, except textbook advisory committees of the State Department of Education or the Board of Elementary and Secondary Education. However, all other provisions contained in [R.S. 42:4.1](#) through [42:12](#) shall be applicable to such group or committee and the public body which established such group or committee shall comply with the provisions of [R.S. 42:7](#) in providing the required notice of meetings of such group or committee.

**Louisiana Attorney General Opinion # 93-315 states, in part** – A private session of a quorum of a city council held to discuss “goal seeking” efforts of the municipality would be violative of the Open Meetings Laws.

## **§ 6.2. Executive or closed meetings of legislative houses and committees**

A. Notwithstanding any contrary provision of [R.S. 42:6](#) and [R.S. 42:6.1](#), executive or closed meetings may be held by the legislature, either house thereof, or any committee or subcommittee of either house, upon the affirmative vote of at least a majority of the members of the house or the committee or subcommittee thereof making the determination to hold such meeting, for one or more of the following purposes:

(1) Discussion of confidential communications.

(2) Discussion of the character, professional competence, or physical or mental health of any person subject to contract with or to employment, election, or appointment or confirmation of appointment by either house of the legislature or any committee or subcommittee of either or by any other public body.

(3) Strategy sessions or negotiations with respect to collective bargaining, prospective litigation after formal written demand, or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the legislature, either house thereof, or any committee or subcommittee of either house.

(4) Discussion regarding a report, development, or course of action regarding security personnel, plans, or devices.

(5) Investigations by the legislature, either house thereof, or by any committee or subcommittee thereof, including the Legislative Audit Advisory Council or any other joint or statutory committee, whenever reasonable grounds exist to believe that the testimony to be elicited will reflect a failure of compliance with law.

(6) Cases of extraordinary emergency, which shall be limited to natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions, or other matters of similar magnitude.

(7) Discussion by either house of the legislature, or any committee or subcommittee thereof, of any matter affecting the internal operations or management of the body.

(8) Any other matters provided by law or pursuant to the joint rules of the legislature.

B. All procedural matters pertaining to the necessity, purposes, or reasons for the holding of executive or closed meetings under the provisions of this Section shall be in accordance with such rules as are adopted by each of the houses of the legislature for the purpose.

C. The provisions of [R.S. 42:4.1](#) through [R.S. 42:12](#) shall not apply to chance meetings, social gatherings, or other gatherings at which only presentations are made to members of the legislature or members of either house thereof or of any committee or subcommittee if no vote or other action, including formal or informal polling of members, is taken.

**D. NOTICE; AGENDA; MINUTES**

**§ 7. Notice of meetings**

A. (1)(a) All public bodies, except the legislature and its committees and subcommittees, shall give written public notice of their regular meetings, if established by law, resolution, or ordinance, at the beginning of each calendar year. Such notice shall include the dates, times, and places of such meetings.

(b)(i) All public bodies, except the legislature and its committees and subcommittees, shall give written public notice of any regular, special, or rescheduled meeting no later than twenty-four hours before the meeting.

(ii) Such notice shall include the agenda, date, time, and place of the meeting, provided that upon approval of two-thirds of the members present at a meeting of a public body, the public body may take up a matter not on the agenda.

(iii) Following the above information there shall also be attached to the written public notice of the meeting, whether or not such matters will be discussed in an executive session held pursuant to [R.S. 42:6.1\(A\)\(2\)](#):

(aa) A statement identifying the court, case number, and the parties relative to any pending litigation to be considered at the meeting.

(bb) A statement identifying the parties involved and reasonably identifying the subject matter of any prospective litigation for which formal written demand has been made that is to be considered at the meeting.

(iv) In cases of extraordinary emergency, such notice shall not be required; however, the public body shall give such notice of the meeting as it deems appropriate and circumstances permit.

(2) Written public notice given by all public bodies, except the legislature and its committees and subcommittees, shall include, but need not be limited to:

(a) Posting a copy of the notice at the principal office of the public body holding the meeting, or if no such office exists, at the building in which the meeting is to be held; or by publication of the notice in an official journal of the public body no less than twenty-four hours before the meeting.



(b) Mailing a copy of the notice to any member of the news media who requests notice of such meetings; any such member of the news media shall be given notice of all meetings in the same manner as is given to members of the public body.

B. Reasonable public notice of day to day sessions of either house of the legislature, and of all matters pertaining to such meetings, including but not necessarily restricted to the content of notices, quorums for the transaction of business, proxy voting, viva-voce votes, and recordation of votes, shall be governed by the provisions of the Louisiana Constitution, the rules of procedure of the Senate and the House of Representatives, and the Joint Rules applicable to both houses. Reasonable public notice of meetings of legislative committees and subcommittees shall be given in accordance with such rules as are adopted by the respective houses for the purpose.

**Louisiana Attorney General Opinion # 85-789 states, in part** - All special meetings must be convened following twenty-four hour notice. The notice given must state an agenda. This agenda must also state with specificity what matters are to be discussed. Merely stating that "the Board will consider any emergency matters which may be presented by the Superintendent and/or board members," is vague and, thus, not proper notice. The notice must be specific as to what matters will be discussed.

### **§ 7.1. Written minutes**

A. All public bodies shall keep written minutes of all of their open meetings. The minutes to be kept by the legislature and legislative committees and subcommittees shall be governed by the provisions of [R.S. 42:7.2](#). The minutes of all other public bodies shall include but need not be limited to:

- (1) The date, time, and place of the meeting.
- (2) The members of the public body recorded as either present or absent.
- (3) The substance of all matters decided, and, at the request of any member, a record, by individual member, of any votes taken.
- (4) Any other information that the public body requests be included or reflected in the minutes.

B. The minutes shall be public records and shall be available within a reasonable time after the meeting, except where such disclosures would be inconsistent with [R.S. 42:6](#), [R.S. 42:6.1](#), and [R.S. 42:6.2](#), or rules adopted under the provisions of [R.S. 42:7.2](#).



**Louisiana Attorney General Opinion # 92-847** points out that the minutes must, at the least, reflect the date, time, and place of the meeting, the presence or absence of district members, substantive matters discussed and any votes taken, and any other information that district members request be reflected in the minutes.

## **§ 7.2. Minutes of legislative sessions, legislative committees and subcommittees**

A. The journals of the proceedings of each of the houses of the legislature, as required to be kept by the provisions of [Article III, Section 10\(B\) of the Louisiana Constitution](#), shall constitute the written minutes of open sessions of the Senate and of the House of Representatives.

B. The written minutes of standing, interim, joint, and other committees and subcommittees of the Senate and House of Representatives shall include such information as may be required by the rules of the respective houses.

## **§ 7.3. Presentation and consideration of offer to sell natural gas to a public body, or to operate or acquire ownership of, a gas utility owned or operated by a public body**

A. For the purposes of this Section, "gas utility" means any revenue producing business or organization which is owned or operated by a public body, and which regularly supplies the public with natural gas at retail.

B. Prior to consideration or action by a public body to accept a proposal by a nonpublic entity to sell natural gas to a public body for use in its gas distribution system sales to retail customers for a term exceeding twelve months including rollovers or extensions, or to assume operation or acquire ownership of, a gas utility being operated or owned by the public body, the proposal shall:

(1) Be introduced, in writing, at an open meeting of the public body.

(2) Not be considered by the public body until notice of the proposal has been published in the official journal of the public body and at least thirty days has lapsed after the introduction of the proposal.

(3) Include a written report of the most recent five year history of the sale of natural gas to similar public bodies for use in gas distribution system sales to retail customers for a term exceeding twelve months including rollovers or extensions by the nonpublic entity if the entity is seeking to sell natural gas to a public body for use in its gas distribution system sales to retail customers for a term exceeding twelve months including rollovers or extensions to the public body or a five year history of the purchase price of other gas utilities operated or owned by a public body paid by the nonpublic entity if the entity is seeking to

assume operation or acquire ownership of the utility. A copy of the report shall be provided to all members of the public body and be available to the public.

(4) Include any written contract or agreement proposed between the nonpublic entity seeking to sell natural gas to a public body for use in its gas distribution system sales to retail customers for a term exceeding twelve months including rollovers or extensions to, or assume operation or acquire ownership of, the gas utility and the public body. A copy of the contract or agreement shall be provided to all members of the public body and be available to the public.

C. Notice of the proposal and the availability of the written report and contract or agreement shall be published once in the official journal of the public body. The notice shall indicate the time and place where the public body will hold a public hearing and consider the proposal.

D. No proposal shall be considered until a public hearing on it has been held. No proposal can be adopted at the meeting at which it is introduced.

E. Any proposed revision or amendment of the published contract or agreement shall be noticed, published, and made available in its entirety in the same manner as required for the original contract or agreement. No such contract or agreement shall be entered into by the public body until at least thirty days have lapsed since the notice of the availability of the revised contract or agreement has been published.

## **§ 8. Sonic and video recordings; live broadcast**

A. All or any part of the proceedings in a public meeting may be video or tape recorded, filmed, or broadcast live.

B. A public body shall establish standards for the use of lighting, recording or broadcasting equipment to insure proper decorum in a public meeting.

**Louisiana Attorney General Opinion # 95-277 states, in part** - Under R.S. 42:8 there is a general right for a citizen to record public meetings, but the public body is mandated to establish standards so this can be done in an orderly fashion.

## **E. ENFORCEMENT; REMEDIES; PENALTIES**

### **§ 9. Voidability**

Any action taken in violation of [R.S. 42:4.1](#) through [R.S. 42:8](#) shall be voidable

by a court of competent jurisdiction. A suit to void any action must be commenced within sixty days of the action.

**Louisiana Attorney General Opinion # 98-232 states, in part** - Actions in violation of notice requirements of Open Meetings Laws are voidable only if suit challenging same is commenced within 60 days of the action.

## **§ 10. Enforcement**

A. The attorney general shall enforce the provisions of [R.S. 42:4.1](#) through [R.S. 42:8](#) throughout the state. He may institute enforcement proceedings on his own initiative and shall institute such proceedings upon a complaint filed with him by any person, unless written reasons are given as to why the suit should not be filed.

B. Each district attorney shall enforce the provisions of [R.S. 42:4.1](#) through [R.S. 42:8](#) throughout the judicial district within which he serves. He may institute enforcement proceedings on his own initiative and shall institute such proceedings upon a complaint filed with him by any person, unless written reasons are given as to why the suit should not be filed.

C. Any person who has been denied any right conferred by the provisions of [R.S. 42:4.1](#) through [R.S. 42:8](#) or who has reason to believe that the provisions of [R.S. 42:4.1](#) through [R.S. 42:8](#) have been violated may institute enforcement proceedings.

**Louisiana Attorney General Opinion # 02-0258A states, in part** - The Attorney General is one of the officers charged with the enforcement of the "Open Meetings Laws" [see La. R.S. 42:10(A)], and in his written opinions, he has steadfastly required public bodies operating under Home Rule Charters to comply with the provisions of the "Open Meetings Laws." See, for example, Attorney General Opinions No. 88-495 (City of Baton Rouge-Parish of East Baton Rouge), No. 93-315 (City of Lafayette), and No. 96-314 (City of Shreveport). Until a court holds otherwise, this office will adhere to this conclusion.

## **§ 11. Remedies; jurisdiction; authority; attorney fees**

A. In any enforcement proceeding the plaintiff may seek and the court may grant any or all of the following forms of relief:

- (1) A writ of mandamus.
- (2) Injunctive relief.
- (3) Declaratory judgment.
- (4) Judgment rendering the action void as provided in [R.S. 42:9](#).
- (5) Judgment awarding civil penalties as provided in [R.S. 42:13](#).

B. In any enforcement proceeding the court has jurisdiction and authority to issue all necessary orders to require compliance with, or to prevent noncompliance with, or to declare the rights of parties under the provisions of [R.S. 42:4.1](#) through [R.S. 42:12](#). Any noncompliance with the orders of the court may be punished as contempt of court.

C. If a person who brings an enforcement proceeding prevails, he shall be awarded reasonable attorney fees and other costs of litigation. If such person prevails in part, the court may award him reasonable attorney fees or an appropriate portion thereof. If the court finds that the proceeding was of a frivolous nature and was brought with no substantial justification, it may award reasonable attorney fees to the prevailing party.

## **§ 12. Venue; summary proceedings**

A. Enforcement proceedings shall be instituted in the district court for the parish in which the meeting took place or will take place.

B. Enforcement proceedings shall be tried by preference and in a summary manner. Any appellate court to which the proceeding is brought shall place it on its preferential docket, shall hear it without delay, and shall render a decision as soon as practicable.

## **§ 13. Civil penalties**

Any member of a public body who knowingly and wilfully participates in a meeting conducted in violation of [R.S. 42:4.1](#) through [R.S. 42:8](#), shall be subject to a civil penalty not to exceed one hundred dollars per violation. The member shall be personally liable for the payment of such penalty. A suit to collect such penalty must be instituted within sixty days of the violation.

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**Louisiana Attorney General Opinion # 94-547 states, in part** - Any member of a public body who knowingly and willfully participates in a meeting conducted in violation of R.S. 42:4.1 through

R.S. 42:8, shall be subject to a civil penalty not to exceed one hundred dollars per violation. The member shall be personally liable for the payment of such penalty. A suit to collect such penalty must be instituted within sixty days of the violation.